IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3518 OF 2006

Shri Chetan Prabhashankar Joshi,)
Age: 32 Yrs. Occ: Business,)
Residing at 2/16, Seeta Mahal,)
Bamanji Petit Road,)
Mumbai 400 036.) ...Applicant

Versus

1. The Assistant Commissioner)
of Customs, SIB, Air Cargo)
Complex, Sahar,)
Mumbai 400 099.)

2. The State of Maharashtra) ...Respondents

Shri A.H.H.Ponda and Shri Sandeep Karnik for the Applicant.

Shri D.T.Palekar for the Respondent No.1.

Ms S.V.Gajare, A.P.P for the State.

CORAM : A. S. OKA, J.

DATE : NOVEMBER 27, 2006.

ORAL JUDGMENT:

1. Rule. The learned counsel for the first Respondent waives service. The learned A.P.P waives service for the second Respondent. Taken up for hearing forthwith. The challenge in this Application under section 482 of the Code of Criminal Procedure, 1973 is to the order dated 20th October, 2005 passed by

the learned Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai. By the said order, the Applicant was directed to surrender his passport to the first Respondent within a period of eight days from the date of service of the order.

2. The learned counsel appearing for the Applicant submitted that the order directing the Applicant to deposit the passport with the first Respondent is uncalled for in as much as even at the time of granting bail the said condition was not imposed. He submitted that the order has been passed without hearing the Applicant or his Advocate. He submitted that on more than 10 occasions the Applicant and his Advocate were present before the Trial Court. However, the matter was not heard for one reason or the other. He submitted that on last few dates fixed before the date of passing the order, the matter was not taken up as the 47th court of learned Additional Chief Metropolitan Magistrate was vacant and the charge of the said court was held by another learned Judge. He submitted that notwithstanding this position the impugned order was passed by the incharge court.

3. The learned counsel for the first Respondent opposed the prayer made by the Applicant. He submitted that considering the nature of the allegations against the Applicant, the said order was required to be passed. He submitted that the Applicant remained absent on number of dates and therefore, the learned Trial Judge was justified in passing the order. He submitted that only after contempt proceeding was filed, the Applicant has deposited the passport with the first Respondent.

4. I have considered the submissions. The Applicant was enlarged on bail by order dated 05th April, 2003. The grant of bail was subject to conditions including the condition that the Applicant will not leave India without prior permission of the Trial Court. It appears from the documents annexed to this Application that atleast on three occasions the Applicant applied for permission to go abroad and the said permission was granted. The Applicant has come back to India after his foreign visits.

5. An Application was made on 24th November, 2003 on behalf of the first Respondent contending that

investigation in the case was in progress and as presence of the Applicant was necessary, he may be directed to surrender his passport to the Customs Department. A reply was filed to the said Application on 17th August, 2004 by the Applicant pointing out several circumstances and raising various contentions.

6. Perusal of the impugned order shows that the same is passed without hearing the Applicant. Moreover, contentions raised by the Applicant in his reply are not at all considered by the learned Trial Judge. A direction to deposit passport is a very drastic order. Such order has serious consequences affecting the rights of the Applicant. Considering the facts and circumstances of the case, I am of the view that the Applicant deserves to be heard on the prayer made in Application dated 24th November, 2003 by the first Respondent seeking a direction against the Applicant to deposit passport. Considering the facts and circumstances of the case and considering contentions raised in reply dated 17th August, 2004, the Application will have to be reconsidered by the Trial Court on its own merits.

7. In compliance with the order impugned, the Applicant has deposited the passport with the first Respondent. The said passport will remain in custody of the concerned court till the Application is decided.

8. Hence, I pass the following order:

(i) The order dated 20th October, 2005 passed by the learned Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai (In-charge 3rd Court, Esplanade, Mumbai) in C.C. No.366/N-2005 is quashed and set aside and the Application dated 24th November, 2003 made by the first Respondent is restored.

(ii) The first Respondent is directed to deposit the passport surrendered by the Applicant with the Trial Court within a period of one week from today.

(iii) The learned Trial Judge is directed to hear and decide the Application dated 24th November, 2003 filed by the first Respondent afresh after giving an opportunity of being heard to the

Applicant and after considering the reply and documents, if any, filed by the Applicant.

(iv) The Trial Court will dispose of the Application as expeditiously as possible and preferably within a period of six weeks from the date of production of authenticated copy of this order.

(v) The deposit of the passport of the Applicant with the Trial Court will be subject to the order which may be passed by the Trial Court on the aforesaid Application made by the first Respondent.

(vi) Application is partly allowed accordingly.

(vii) Parties and concerned court to act upon an authenticated copy of this order.

(viii) All contentions of both the parties on merits are expressly kept open.

JUDGE